

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2306073
Decision Date:	10/31/2023	Hearing Date:	09/05/2023
Hearing Officer:	Patricia Mullen		

Appearance for Appellant:



Appearances for MassHealth:

Brad Goodier, RN, Disability Reviewer II, Disability Community Based Services Waiver Unit; Linda Phillips, RN, Associate Dir., Appeals & Regulatory Compliance; Karrah Garmalo, RN, Nurse Reviewer II



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Moving Forward Plan Community Living (MFP-CL) Waiver
Decision Date:	10/31/2023	Hearing Date:	09/05/2023
MassHealth's Reps.:	Brad Goodier, RN, Disability Reviewer II, Disability Community Based Services Waiver Unit; Linda Phillips, RN, Associate Dir., Appeals & Regulatory Compliance; Karrah Garmalo, RN, Nurse Reviewer II	Appellant's Rep.:	Daughter/activated HCP
Hearing Location:	Quincy Harbor South (remote)		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated March 21, 2023, MassHealth denied the appellant's application for the MassHealth Moving Forward Plan Community Living Home and Community Based Services (MFP-CL) waiver, because MassHealth determined that the appellant cannot be safely served in the community within the terms of the waiver. (Exhibit 1 and 130 CMR 519.007(H)). The appellant filed this appeal in a timely manner on July 21, 2023¹. (Exhibit 3 and 130 CMR 610.015(B)). A denial

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

of a requested MassHealth benefit is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's MFP-CL waiver application because it determined that the appellant could not be safely served in the community within the terms of the waiver.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(H), in determining that the appellant is clinically ineligible to participate in the MFP-CL waiver program because he cannot be safely served in the community within the terms of the waiver.

Summary of Evidence

The appellant was represented telephonically at the hearing by his daughter, who is his activated Health Care Proxy (hereinafter "the appellant's representative"). The appellant's daughter verified the appellant's identity. MassHealth was represented telephonically by a Disability Reviewer II from the UMass Medical School Disability and Community Based Services Waiver Unit (hereinafter "the MassHealth representative"), by the Associate Director of Appeals and Regulatory Compliance for the Disability and Community Based Services Waiver Unit (hereinafter "the Associate Director"), and by a Nurse Reviewer II from the Disability and Community Based Services Waiver Unit.

The appellant is over age 65 and open on MassHealth Standard. (Exhibit 6). The appellant is currently a resident at a skilled nursing facility (SNF). (Testimony).

The MassHealth representative submitted his testimony at Exhibit 8 and testified as follows:

MassHealth has two home and community-based services (HCBS) Waivers that assist Medicaid-eligible persons move into the community and obtain community-based services; these are the MFP-Residential services (RS) Waiver, and the MFP Community Living (CL) Waiver. Both waivers help individuals move from a nursing home or long-stay hospital to an MFP-qualified

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- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends;
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 60 days, to request a fair hearing for member eligibility-related concerns.

residence in the community and obtain community-based services. The MFP-CL Waiver is for individuals who can move into their own home or apartment, or to the home of someone else, and receive services in the community that are less than 24 hours/day, 7 days per week. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours/day, 7 days per week. The appellant applied for a transfer from the MFP-RS to the MFP-CL Waiver on December 7, 2022. (Exhibit 9, p. 49).

The eligibility criteria for the MFP Waivers is as follows: (Exhibit 9, pp. 6-7):

- The applicant must be living in a nursing facility or long-stay hospital, and lived there for at least 90 consecutive days;
- The applicant must be 18 years old or older, and have a disability, or be age 65 and older;
- The applicant must meet clinical requirements for, and be in need of the Waiver services that are available through the MFP Waivers;
- The applicant must be able to be safely served in the community within the terms of the MFP Waivers;
- The applicant must meet the financial requirements to qualify for MassHealth special financial rules existing for Waivers' participants;
- The applicant will transition to an MFP-qualified residence in the community; and
- In addition to the above, to qualify for the MFP-RS Waiver, an applicant must need residential support services with staff supervision 24 hours/day, 7 days/week.

At issue for this appeal is:

Regulation 130 CMR 519.007 (H)(2): (Exhibit 9, pp. 38-39).

- Is MassHealth correct in denying the appellant's application for the MFP-CL Waiver, because he cannot be safely served in the community within this Waiver?

The MassHealth representative continued his testimony as follows: The appellant was found clinically eligible for the MFP-RS Waiver and clinically ineligible for the MFP-CL Waiver, due to safety concerns, on June 9, 2022. The appellant remains a pending participant for the MFP-RS Waiver. The appellant applied for a transfer to the MFP-CL waiver on December 7, 2022. (Exhibit 9, p. 49). As per previous assessment of May 2022, the appellant has resided at the SNF since [REDACTED], after being hospitalized. No documentation was available in the provided records regarding this hospitalization, however, per MD note from September 15,

2020, the appellant required hospitalization in June 2019 for paranoia and agitation and altercation with another resident and was readmitted to the SNF. Per the appellant's daughter/HCP (the appellant's representative), the appellant had been living with her for three years, prior to hospitalization, but she had to bring the appellant to the hospital because he had become aggressive and agitated towards her and she could no longer care for him at home. The appellant's daughter/HCP reported that the appellant's loss of independence, due to his dementia, was a trigger for him at that time and, although he was being followed in the community by psychiatric services, his symptoms were progressing, requiring long term care. (Exhibit 9, p. 79).

The appellant's medical history includes vascular dementia with behavioral disturbance, unspecified psychosis, major depressive disorder (MDD), transient ischemic attack (TIA) (2021), amaurosis fugax which is transient loss of vision in one or both eyes, traumatic brain injury (TBI) as a professional boxer, type 2 diabetes, hyperlipidemia (HLD), cataracts, Ankylosing Hyperostosis Forestier Disease of the thoracic region which is a buildup of calcium and salts in the ligaments and tendons causing hardening and overgrowth of bone, diverticulosis, GERD, alcohol dependence in remission, and COVID-19. (Exhibit 9, p. 79).

The eligibility visit took place on February 10, 2023, in the appellant's room at the SNF. (Exhibit 9, p. 80). Introductions were made by the SNF social worker who did not stay for the visit. The appellant's daughter/HCP attended the visit. A SNF nurse was present for a portion of the interview. Further eligibility discussions were made with the Department of Developmental Services (DDS) care manager and the DDS supervisor. Also contacted telephonically regarding eligibility was the appellant's granddaughter and great niece.

Per the mini mental status exam, the appellant answered his date of birth correctly. The appellant did not know the date, day of the week, current and past presidents, and stated that the season was summer. The last BIMS (cognitive assessment tool) on December 2, 2022, was 5/15 which indicates severely impaired cognition. (Exhibit 9, pp. 80, 149). The appellant did not know his medications and was unable to identify symptoms of hypo/hyperglycemia (low or high blood glucose levels) or their interventions. Due to his cognitive status, the appellant is unable to check his blood sugar levels. (Exhibit 9, p. 80). The appellant resides on a locked unit which is preventative, wears a wander guard, and has an order for a head count 6 times a day. (Exhibit 9, p. 80). To note, the transfer request was delayed as the appellant's daughter/HCP was difficult to contact and several emails were required (Exhibit 9, pp. 81-82).

The Waiver assessment consists of documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit 9, pp 54-74); MFP Clinical Determination Assessment (Exhibit 9, pp.75-83); MFP Waivers Community Risks Assessment (Exhibit 9, pp. 84-85); MFP Waivers Caregiver Risk assessment (Exhibit 9, pp. 86-88); a review of the appellant's medical record; and a discussion with the nursing facility staff. (Exhibit 8, p. 3).

The MassHealth representative continued testimony as follows: During the Waiver eligibility assessment review, MassHealth noted the following documentation indicating that the appellant's psychiatric conditions cannot be safely supported through the MFP-CL Waiver:

- June 30, 2022: nursing facility social service progress note states "care plan meeting held on this date. Resident's invoked health care proxy did not RSVP." Social Worker states "There are no plans for discharge as he (the appellant) requires 24-hour care" (Exhibit 9, page 134).
- December 18, 2022: nursing facility social service progress note states "Care plan meeting held, (the appellant's) HCP was invited but did not attend" (Exhibit 9, page 185).
- November 1, 2022 – January 31, 2023: nursing facility ADL (activities of daily living) flowsheets indicate that the appellant is dependent on staff for bathing, an extensive assist for grooming, extensive assist for dressing/undressing, assist for feeding, limited assist with ambulation, incontinent of urine, and at times incontinent of bowel across all shifts (Exhibit 9, page 135-143)
- January 10, 2022: behavioral health progress note by physician assistant (PA) indicates the appellant has a history of aggression, anger, verbal outburst and hostility. PA indicates that no GDR (gradual dose reduction in medication) is warranted as disease progression (dementia) is expected (Exhibit 9, page 105-107).
- January 31, 2023: nursing facility progress note by director of nursing states "As per Dr. [REDACTED], additional (medication) dosage reduction attempts are inadvisable at this time. Decision based upon tapering of medication would not achieve the therapeutic effects and the current dose remains necessary to maintain the resident's function, well-being, safety and overall quality of life" (Exhibit 9, page 184).
- February 24, 2023: behavioral health progress note by PA states "Staff reports that target behaviors have become more frequent, especially his anger towards others". PA indicates the resident is residing on a locked dementia unit. Mental status exam reveals impaired judgment, confusion and impaired memory. Recommended increase of Depakote. Long term goal for resident as stated by PA – limit negative

from disease progression and maintain certain level of functioning (Exhibit 9, pages 158-161).

On March 9, 2023, the appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on March 15, 2023, as part of the MFP Waiver eligibility process, a second clinical review was conducted by The Massachusetts Rehab Commission (MRC) Clinical Team, who oversees the Community Living Waiver. MassHealth, DDS, and MRC determined that the appellant is not considered to be clinically eligible for participation in the MFP-CL Waiver due to significant health and safety risks related to his psychiatric conditions. (Exhibit 8, p. 4).

The MassHealth representative testified that the appellant has several risks when entering the community. The appellant is at risk for self-neglect, exploitation, and mental decompensation related to dementia and the progressive nature of the disease; hypo/hyperglycemic episodes due to diabetes and inability to check his own blood sugar; elopement related to a private door in his room that leads outside and his bedroom being at the opposite end of the house of caregiver; risk for falls related to psychotropic drug use; risk for injury due to inability to evacuate in an emergency related to the door in his room leading outside being blocked (Exhibit 9, page 81); the appellant's daughter is at risk of caregiver burnout; and the appellant's daughter, granddaughter, and great niece are all at risk of injury related to his history of dementia with verbal and physical aggression. (Exhibit 8, p. 4).

The MassHealth representative noted in sum, the appellant requires 24/7 care and supervision for safety related to his dementia and impaired cognitive status. The appellant is a risk to himself and others without this level of support, as there is a history of verbal and physically aggressive behaviors, both in the community and during institutionalization. The appellant is psychiatrically unstable with recent increase in behaviors, notably anger and impulsiveness with others as of February 2023, which required an increase in Depakote. The appellant had previously failed in the community when he had verbal outburst and aggression directed toward his daughter when he last lived with her in 2018. The appellant's behaviors led to institutionalization on a locked unit due to safety concerns requiring 24/7 care, wander guard and orders for head counts six times per day (Exhibit 9, page 83). The appellant's daughter has been difficult to contact at times, with follow-up calls and emails frequently required. Identified support, the appellant's granddaughter, was also difficult to contact and required three attempts before receiving a response. The appellant's daughter will be the only live in caregiver and she works full time. The MassHealth representative noted that while the family intentions are to support him in the home, this is a new setting which could further impact his behaviors and confusion and there is no concrete plan for the 24/7 structure and support that is needed to maintain his safety. It was documented that the appellant's daughter intends to put foam pads on the floor to prevent mechanical fall injuries and use cameras to monitor the appellant remotely. (Exhibit 9, page 81). These implementations are not a substitution for 24/7 supervision and staffing. Also, the appellant's daughter did not commit to a long-term plan,

indicating she would try bringing the appellant home, and if it did not work, he could go back to the residential setting. (Exhibit 9, page 82-83).

MassHealth determined, given the documentation and interviews with family and facility staff, that the appellant is a risk to himself and others due to psychiatric instability, with no concrete plan for 24/7 structure/support and staffing; therefore, he is unable to be safely transferred from the MFP-RS to the MFP-CL Waiver at this time. (Exhibit 8, p. 5, testimony).

The MassHealth representative stated that the appellant continues to be eligible for the MFP residential services waiver because he requires 24/7 care. The MassHealth representative stated that the maximum number of service hours provided under the MFP-CL waiver program is 12 hours a day. The MassHealth representative testified that the MFP-CL waiver program cannot meet the appellant's need for 24 hours a day of care/supervision, 7 days a week. The MassHealth representative stated that the appellant's daughter works full time and her job was the cause of delays in communication with the nursing facility and MassHealth with regard to the appellant's case. The MassHealth representative pointed out that the appellant is on a locked unit with a structured environment, wander guard, and 24 hour a day care and it is huge leap from this setting to community living with no staff. The MassHealth representative stated that there is no plan in place showing a guarantee of 24/7 care, and a concrete level of support.

The appellant's representative stated that she is familiar with the waiver program through her employer and she believes that clients also get 2 hours of services at night. The appellant's representative stated that she just wants the maximum services necessary to bring her father home. When asked what has changed since the appellant moved out of her home and into the nursing facility 5 years ago, the appellant's daughter stated that the appellant is on heavier medications now and is more stable; the appellant's representative stated that the appellant is not paranoid toward her anymore. The appellant's representative stated that she did not have enough support when the appellant lived with her before; she had only one caregiver and the appellant lashed out at her. The appellant's representative stated that her employer will allow her flexibility, and she and her family and friends would be available to care for the appellant. The appellant's representative stated further that she plans to enroll the appellant in a day program and, between the day program and 12 hours a day of waiver services, it will reduce the amount of time she needs to be there. The appellant's representative stated that the appellant was in a day program when he lived with her. Upon questioning by the hearing officer, the appellant's representative reported that the appellant had not been in a day program for people with dementia.

The MassHealth representative stated that a day program is not part of the MFP-CL waiver program and he could not speak to whether or not the appellant would be accepted into such program or whether or not MassHealth would cover the day program. The MassHealth representative noted further that the 12 hours a day of services were not guaranteed as other unforeseen events such as weather, staffing issues, illnesses, could affect availability, and the

appellant cannot be left alone. The MassHealth representative stated that the appellant needs a 24/7 live in caregiver.

The appellant's representative noted that the appellant has been hospitalized few times for cardiac concerns. The appellant's representative stated that the other intended caregivers (the appellant's granddaughter and the appellant's grandniece) both work full time and the grandniece has 3 children, but both woman have flexibility. The appellant's representative noted that she has moved and the appellant's room would no longer have a door leading outside. The appellant's daughter stated that she would place an alarm in the house and have a tracking device in place in case the appellant tries to elope.

The appellant's representative stated that she does not see why it would not work out and she would like the chance to try. The appellant's representative stated that she did not always respond to MassHealth right away due to work and there was no indication that it was an urgent matter.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. The appellant is over age 65, open on MassHealth Standard, and is currently a resident at a SNF.
2. The appellant was found clinically eligible for the MFP-RS Waiver and clinically ineligible for the MFP-CL Waiver due to safety concerns on June 9, 2022; the appellant remains a pending participant for the MFP-RS Waiver.
3. The appellant applied for a transfer to the MFP-CL waiver on December 7, 2022.
4. The appellant was admitted to the SNF on [REDACTED], after being hospitalized.
5. Per MD note from September 15, 2020, the appellant required hospitalization in June 2019 for paranoia and agitation and altercation with another resident and was readmitted to the SNF.
6. The appellant had been living with his daughter for three years, prior to hospitalization, but she had to bring the appellant to the hospital because he had become aggressive and agitated towards her and she could no longer care for him at home.
7. The appellant's loss of independence, due to his dementia, was a trigger for him at that time and although he was being followed in the community by psychiatric services, his symptoms were progressing requiring long term care.

8. The appellant's medical history includes vascular dementia with behavioral disturbance, unspecified psychosis, major depressive disorder (MDD), transient ischemic attack (TIA) (2021), amaurosis fugax which is transient loss of vision in one or both eyes, traumatic brain injury (TBI) as a professional boxer, type 2 diabetes, hyperlipidemia (HLD), cataracts, Ankylosing Hyperostosis Forestier Disease of the thoracic region which is a buildup of calcium and salts in the ligaments and tendons causing hardening and overgrowth of bone, diverticulosis, GERD, alcohol dependence in remission, and COVID-19.
9. The waiver eligibility visit took place on February 10, 2023, in the appellant's room at the facility; the appellant's daughter attended the visit; a SNF nurse was present for a portion of the interview; further eligibility discussions were made with the DDS care manager, and DDS supervisor; also contacted telephonically regarding eligibility was the appellant's granddaughter and great niece.
10. Per the mini mental status exam, the appellant answered his date of birth correctly; he did not know the date, day of the week, current and past presidents and stated that the season was summer; the last BIMS (cognitive assessment tool) on December 2, 2022, was 5/15 which indicates severely impaired cognition; the appellant did not know his medications and was unable to identify symptoms of hypo/hyperglycemia (low or high blood glucose levels) or their interventions; due to his cognitive status, the appellant is unable to check his blood sugar levels.
11. The appellant resides on a locked unit which is preventative, wears a wander guard, and has an order for a head count 6 times a day.
12. The transfer request was delayed as the appellant's daughter was difficult to contact and several emails were required.
13. The Waiver assessment consists of documents including MDS-HC, MFP Clinical Determination Assessment, MFP Waivers Community Risks Assessment, MFP Waivers Caregiver Risk assessment, a review of the appellant's medical record, and a discussion with the nursing facility staff.
14. A June 30, 2022 nursing facility social service progress note states "care plan meeting held on this date. Resident's invoked health care proxy did not RSVP."..."There are no plans for discharge as he (the appellant) requires 24-hour care".
15. A December 18, 2022 nursing facility social service progress note states "Care plan meeting held, (the appellant's) HCP was invited but did not attend".

16. Nursing facility ADL flowsheets from November 1, 2022 – January 31, 2023 indicate that the appellant is dependent on staff for bathing, an extensive assist for grooming, extensive assist for dressing/undressing, assist for feeding, limited assist with ambulation, incontinent of urine, and at times incontinent of bowel across all shifts.
17. A January 10, 2022 behavioral health progress note from a PA indicates the appellant has a history of aggression, anger, verbal outburst and hostility; no GDR (gradual dose reduction in medication) is warranted as disease progression (dementia) is expected.
18. A January 31, 2023 nursing facility progress note from the SNF Director of Nursing states “As per Dr. [REDACTED], additional (medication) dosage reduction attempts are inadvisable at this time. Decision based upon tapering of medication would not achieve the therapeutic effects and the current dose remains necessary to maintain the resident’s function, well-being, safety and overall quality of life”.
19. A February 24, 2023 behavioral health progress note from the PA states “Staff reports that target behaviors have become more frequent, especially his anger towards others”; the resident is residing on a locked dementia unit; mental status exam reveals impaired judgment, confusion and impaired memory. Recommended increase of psychiatric medication Depakote; Long term goal for resident as stated by the PA – limit negative from disease progression and maintain certain level of functioning.
20. On March 9, 2023, the appellant’s case was discussed at the MassHealth Waiver Clinical Team review meeting; in addition, on March 15, 2023, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the MRC Clinical Team, who oversees the Community Living Waiver; MassHealth, DDS, and MRC determined that the appellant is not considered to be clinically eligible for participation in the MFP-CL Waiver due to significant health and safety risks related to his psychiatric conditions.
21. The appellant is at risk for self-neglect, exploitation, and mental decompensation related to dementia and the progressive nature of the disease; hypo/hyperglycemic episodes due to diabetes and inability to check his own blood sugar; elopement; risk for falls related to psychotropic drug use; risk for injury due to inability to evacuate in an emergency; the appellant’s daughter is at risk of caregiver burnout; and the appellant’s daughter, granddaughter, and great niece are all at risk of injury related to the appellant’s history of dementia with verbal and physical aggression.
22. The appellant requires 24/7 care and supervision for safety related to his dementia and impaired cognitive status; the appellant is a risk to himself and others without this level of support, as there is a history of verbal and physically aggressive behaviors, both in the community and during institutionalization.

23. The appellant is psychiatrically unstable with recent increase in behaviors, notably anger and impulsiveness with others as of February 2023, which required an increase in Depakote.
24. The appellant's verbal outburst and aggression directed toward his daughter when he last lived with her in 2018 led to institutionalization on a locked unit due to safety concerns requiring 24/7 care, wander guard and orders for head counts six times per day.
25. MassHealth has had difficulty contacting the appellant's daughter, with follow-up calls and emails frequently required.
26. MassHealth has had difficulty contacting the appellant's granddaughter, an identified support, requiring three attempts before receiving a response; the appellant's granddaughter works full time.
27. The appellant's great niece, an identified support, works full time and has 3 children.
28. The appellant's daughter works full time; the appellant's daughter would be the only live in caregiver.
29. The maximum number of service hours provided under the MFP-CL waiver program is 12 hours a day.

Analysis and Conclusions of Law

Money Follows the Person (MFP) Community Living Waiver.

(a) Clinical and Age Requirements. The MFP Community Living Waiver, as authorized under section 1915(c) of the Social Security Act, allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing facility services, chronic disease or rehabilitation hospital services, or, for participants 18 through 21 years of age or 65 years of age and older, psychiatric hospital services to receive specified waiver services, other than residential support services in the home or community, if he or she meets all of the following criteria:

1. is 18 years of age or older and, if younger than 65 years old, is totally and permanently disabled in accordance with Title XVI standards;
2. is an inpatient in a nursing facility, chronic disease or rehabilitation hospital, or, for participants 18 through 21 years of age or 65 years of age and older, psychiatric hospital with a continuous length of stay of 90 or more days, excluding rehabilitation days;

3. must have received MassHealth benefits for inpatient services, and be MassHealth eligible at least the day before discharge;
4. needs one or more of the services under the MFP Community Living Waiver;
5. is able to be safely served in the community within the terms of the MFP Community Living Waiver; and
6. is transitioning to the community setting from a facility, moving to a qualified residence, such as a home owned or leased by the applicant or a family member, an apartment with an individual lease, or a community-based residential setting in which no more than four unrelated individuals reside.

(b) Eligibility Requirements. In determining eligibility for MassHealth Standard and for these waiver services, the MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of his or her marital status. The applicant or member must

1. meet the requirements of 130 CMR 519.007 (H)(2)(a);
2. have countable income that is less than or equal to 300% of the federal benefit rate (FBR) for an individual;
3. have countable assets of \$2,000 or less for an individual and, for a married couple, if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and
4. not have transferred resources for less than fair market value, as described in 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

(c) Enrollment Limits. Enrollment in the MFP Community Living Waiver is subject to a limit on the total number of waiver participants. The number of participants who can be enrolled in this waiver may be limited in a manner determined by the MassHealth agency.

(d) Waiver Services. Eligible members who are enrolled as waiver participants in the MFP Community Living Waiver are eligible for the waiver services described in 130 CMR 630.405(D): Money Follows the Person Community Living (MFP-CL) Waiver.

(130 CMR 519.007(H)(2)).

Pertinent here, the MFP-CL waiver requires that the applicant "is able to be safely served in the community within the terms of the ... Waiver." (130 CMR 519.007(H)(2)(a)(5)). As the MassHealth representative explained, this involves a comprehensive review to determine whether a particular applicant's medical needs can be met given the available community resources.

MassHealth's determination that the appellant has multiple risk factors with regard to returning to living in the community is supported in the documentation. These risk factors include risk for

self-neglect, exploitation, and mental decompensation related to dementia and the progressive nature of the disease; hypo/hyperglycemic episodes due to diabetes and inability to check his own blood sugar; elopement; risk for falls related to psychotropic drug use; and risk for injury due to inability to evacuate in an emergency. The appellant's daughter is at risk of caregiver burnout, and the appellant's daughter, granddaughter, great niece, and any waiver staff are all at risk of injury related to the appellant's history of dementia with verbal and physical aggression. The appellant requires 24/7 care and supervision for safety related to his dementia and impaired cognitive status and is a risk to himself and others without this level of support, as there is a history of verbal and physically aggressive behaviors, both in the community and during institutionalization. The appellant is psychiatrically unstable with recent increase in behaviors, notably anger and impulsiveness with others as of February 2023, which required an increase in Depakote. The appellant's verbal outburst and aggression directed toward his daughter when he last lived with her in 2018 led to institutionalization on a locked unit due to safety concerns requiring 24/7 care, wander guard and orders for head counts six times per day.

The appellant's medical history includes vascular dementia with behavioral disturbance, unspecified psychosis, major depressive disorder, transient ischemic attack (2021), amaurosis fugax which is transient loss of vision in one or both eyes, traumatic brain injury as a professional boxer, type 2 diabetes, hyperlipidemia, cataracts, Ankylosing Hyperostosis Forestier Disease of the thoracic region which is a buildup of calcium and salts in the ligaments and tendons causing hardening and overgrowth of bone, diverticulosis, GERD, and alcohol dependence in remission. The appellant is dependent on SNF staff for bathing, an extensive assist for grooming, extensive assist for dressing/undressing, assist for feeding, limited assist with ambulation; he is incontinent of urine, and at times incontinent of bowel across all shifts.

The appellant's daughter stated that she hopes to get the appellant into a day program, but there is no guarantee he will be accepted into such program in light of his dementia, medical conditions, and need for assistance with ADLs. Further, there is no evidence to support that MassHealth would approve prior authorization and cover a request for adult day health services for the appellant. The appellant's verbal outbursts and aggression directed toward his daughter when he last lived with her in 2018 led to institutionalization on a locked unit in the first place, and, while the appellant's daughter wants to try to have him live with her again to see how it goes, the evidence supports that the appellant's condition is getting progressively worse, not better. The MassHealth representative pointed out that the waiver staff is not always guaranteed due to unforeseen circumstances, and further the maximum number of hours per day for all waiver services is 12 hours. The appellant cannot be left alone. The appellant's intended caregivers in the community are his daughter, granddaughter, and great niece, who all have full time jobs. The appellant's great niece also has 3 children.

MassHealth's determination that the appellant cannot be safely served in the community within the terms of the MFP-CL Waiver is supported by the evidence in the record. Because the appellant does not meet the criteria in 130 CMR 519.007(H), necessary for eligibility for the MFP-CL waiver, MassHealth's denial of the application is upheld. The appeal is DENIED.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Linda Phillips, UMass Medical School - Commonwealth
Medicine, Disability and Community-Based Services, 333 South Street, Shrewsbury, MA 01545-
7807

Appellant Representative: [REDACTED]